

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TREMEL ROSARIO,

Plaintiff,

1:22-cv-01112 (BKS/DJS)

v.

JON DOE, *et al.*,

Defendants.

Appearances:

Plaintiff pro se:

Tremel Rosario

20-A-0975

Sing Sing Correctional Facility

354 Hunter Street

Ossining, New York 10562

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff pro se Tremel Rosario commenced this proceeding under 42 U.S.C. § 1983, and sought leave to proceed *in forma pauperis* (“IFP”), which was granted. (Dkt. Nos. 9, 11). This matter was referred to United States Magistrate Judge Daniel J. Stewart who, on January 31, 2023, issued a Report-Recommendation recommending that Plaintiff’s complaint be dismissed on the ground that it is barred *Heck v. Humphrey*, 512 U.S. 477 (1994). (Dkt. No. 12). Magistrate Judge Stewart advised Plaintiff that under 28 U.S.C. § 636(b)(1), he had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 7–8). Plaintiff did not file an objection to the Report-Recommendation.

As no objection to the Report-Recommendation has been filed, and the time for filing

objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment.

Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the recommendation that the complaint be dismissed.

For these reasons, it is hereby


ORDERED that Magistrate Judge Stewart’s Report-Recommendation (Dkt. No. 12) is **ADOPTED**; and it is further

ORDERED that Plaintiff’s complaint (Dkt. No. 1) is **DISMISSED WITHOUT PREJUDICE**;¹ and it is further

ORDERED that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 2, 2023
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge

¹ “Disposition of [a] case on *Heck* grounds . . . warrants only dismissal without prejudice, because the suit may be reinstituted should plaintiff’s conviction be “expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” *Amaker v. Weiner*, 179 F.3d 48, 52 (2d Cir. 1999) (*quoting Heck*, 512 U.S. at 487).